IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9227 OF 2004

Bhawna Musafir Jain Yuvak
Mandal (Dombivali) Petitioner

versus

The Commissioner,
Municipal Corporation for the
City of Kalyan & Dombivali and
another. Respondents

J.G.Reddy, adv. for petitidoner.
D.S.Rao, adv. for respondent no.1.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, J.

DATE : 3rd December 2004

PC :

1. This petition under Article 226 of Constitution of India challenges the action of Kalyan-Dombivali Municipal Corporation in recovering property taxes from the petitioner. It appears that the petitioner has raised an objection to the levy, assessment and recovery of the property taxes but their objections have been rejected by Kalyan-Dombivali Municipal Corporation (respondent no.1). These orders are under challenge in this petition.

2. It is the case of petitioner that it is a public charitable trust duly registered under the Bombay Public Trusts Act, 1950. It is also registered under the Maharashtra Co-operative Societies Act, 1960. The date of registration of petitioner under Bombay Public Trusts Act is 15th April 1989. It is further contended that the main aim and object of the trust is charitable work and providing services to the needy and poor public. For achieving this aim and object, the petitioner is managing and administering a dispensary. It provides medical aid and assistance to needy people. It also provides financial assistance to the needy people.

3. The premises in question are Plot No.A/2 and 17/B of Bapuji Co-operative Housing Society at Dombivali (East), District Thane. From these premises petitioner is running a dispensary since 1990. A very nominal fee is charged according to the petitioner (Rs.5/- only). The public at large is taking advantage of this facility. Respondent no.1 has granted permission to run the dispensary from these premises. Petitioner has also been granted exemption certificate u/s 80-G(5) of Income Tax Act, 1961.

4. However, it is the case of petitioner that property tax bills have been raised in the name of owner by respondent no.1 Corporation. The commercial rate has been applied. Although objections have been raised by the petitioner to levy, assessment and recovery of property taxes by claiming exemption u/s 132(1)(b) of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "BPMC Act" for the sake of brevity), the same have been rejected by respondent no.1.

5. We have heard Mr.Reddy for petitioner and Mr.Rao appearing for respondent no.1. With their assistance we have perused the petition and the annexures thereto. It appears to us that the rejection of petitioner's application for exemption from payment of property taxes is only on the ground that no worshipping activities are conducted from the said premises.

6. Section 132(1)(b) reads as under :-

"132. General tax on what premises to be levied

(1) The general tax shall be levied in respect of all buildings and lands in the City except -

(a) ... ...
(b) buildings and lands or portions thereof solely occupied and used for public worship or for a public charitable purpose."

7. From a bare perusal of the aforesaid provision it is clear that exemption is available in cases of public worship or public charitable purpose. Respondent no.1 is construing the provisions as if only Religious activities are exempted. While making a reference to public charitable purposes also in the impugned order it is not clear to us as to why the exemption has been denied in this case. We are of the view that the provisions have not been taken into account in their entirety and therefore, the impugned orders cannot be sustained. In our view, interest of justice would be subserved if the matter is remitted back to respondent no.1 for fresh consideration. Accordingly, following order :-

A) Impugned orders dated 28th November 2003 and 30th August 2004 are quashed and set aside;

B) Petitioner’s application for exemption/ concession from payment of property taxes is directed to be reconsidered by respondent no.1 on merits and in accordance with law;

C) Respondent no.1 to decide the application uninfluenced by any observations in the impugned orders;

D) All contentions are kept open;

E) Respondent no.1 to pass a speaking order after granting personal hearing to the petitioner;

F) Till the issue of exemption is examined by respondent no.1, the demand notices should not be enforced.

8. Petition disposed of. No order as to costs.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)